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OFFICE OF THE CLERK

No. 92-725

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

SALVADOR GODINEZ, Warden,
Ely State Prison,
Petitioner,

v.

RICHARD ALLAN MORAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 16, 1992
CERTIORARI GRANTED DECEMBER 14, 1992

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
Clerk of the Court

AREA CODE 202
479-3011

December 14, 1992

Stuart J. Newman, Esq.
Deputy Attorney General of Nevada
Capitol Complex, Justice Division
Carson City, Nevada 89710

Re: 92-725 - Salvador Godinez, Warden
v. Richard Allan Moran

Dear Mr. Newman:

The Court today entered the following order in the above stated case:

"The motion of respondent for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is granted."

Enclosed are Memoranda describing the time requirements and procedures under the Rules, together with a Specification Chart for your use.

Please note that this case will be argued in the March Session. Requests for extensions of time to file briefs on the merits

are not favored. The deferred appendix method may not be used.

If you have any questions, please feel free to telephone me.

Very truly yours,

WILLIAM K. SUTER, CLERK

/s/ Sandy Nelsen
Sandy Nelsen
Assistant Clerk

Enclosures

Psychiatric Evaluation of
Jack A. Jurasky, M.D.

(letterhead information deleted in printing)

September 19, 1984

Office of the Public Defender
309 S. Third Street, Suite 226
Las Vegas, Nevada 89155

Attn: Robert L. Miller, Deputy

Re: Psychiatric Evaluation of
Richard Allen Moran
(JC # 3083 84F)

Gentlemen:

Richard A. Moran, 30, was interviewed on September 17, 1984, at the Clark County Jail where he is being held on multiple charges of Murder, events alleged to have occurred during the month of August 1984, in two separate events. The first of these is said to have been perpetrated on August 2, 1984, taking place at the Red Pearl Bar and involved the death of a man and a woman. Later on August 11th, this defendant is charged with the homicide of his ex-wife. I am in possession of copies of a large number of records including the discovery,

information, and voluntary statements made by the defendant himself on separate occasions.

The defendant, a nice-looking young man, appearing his stated age, sat opposite me throughout the interview apparently quite willing to discuss the case with me. He informed me that he has lived in Las Vegas for about 6 years coming from New York. He has been working here as a bartender and enjoyed that type of work. In New York, he was involved in the construction industry, primarily as a roofer. His only marriage was to the victim. He has a high school education and has never been in the military. He acknowledged to me that he has been charged with three counts of murder as well as arson, and two counts of armed robbery. He made no attempt to explain or excuse himself other than to state that he had been using cocaine very heavily for many months and two weeks prior to these inci-

dences had been free-basing. He told me that he had no prior criminal record but he got so involved in cocaine that "I just had to get more and more of it. I even lost a job about it." He told me that he had divorced his wife last October, not because of cocaine, but because he had been drinking excessively. Even though they were divorced, he felt that their relationship was amicable. The precipitant of the divorce was the fact that she was seeing another man after having become increasingly disturbed by his uncontrolled drinking. As to the murders themselves, the defendant claims to have little logical or consistent recall. He states "I have visions of myself pointing the gun at the victims, but I can't see them. I can see my wife's dead body, but I can't see myself." Other than that, he has spotty recollection of events after the police picked him up. He does recall attempting to make some sort of story to

account for his self-inflicted bullet wound by accusing others, but gave those stories up as he began to come down off his drug intoxication which ultimately led to his confessions and statements.

He was willing to talk to the best of his ability about the homicides in the bar, but all he could state was "I don't even know what those poor two people in the bar look like. I can only see myself holding the gun."

He has never been a patient in a mental hospital or felt the need for psychiatric treatment although he admits he has always drank alcohol heavily. "Almost continuously with a lot of amnesia about my drinking. Finally, I had a seizure in February 1984 and stopped drinking. It was then that I got started on the cocaine."

The defendant's general attitude and behavior were quiet cooperation. He manifested no hostility nor in any way did he

attempt to excuse himself or justify his behavior. The stream of thought was fluent and the content at all times was relevant, goal directed, and material. Affect was depressed but appropriate. Mood was sad and moderately depressed. He wept on two occasions when talking about the victims. He denies the existence of hallucinations or delusions. He did say "I had one experience in which I thought they changed my hospital room when actually I was just coming down from my high." His memory at the present time seems to be grossly intact for recent and remote events except for when under the heavy influence of alcohol or cocaine. He states "I can only remember little things and they are not always connected." He is at the present time well oriented as to time, place, and person. His capacity to pay attention and to concentrate is good as manifested by his ability to subtract 7's from a hundred serially quickly

and without error. I estimate his intelligence to be at least normal if not slightly superior. Insight is limited to an awareness of his involvement and addiction to drugs. Judgment at the present time is within normal limits.

There is not the slightest doubt in my mind that the man I interviewed in the jail on this date was in full control of his faculties insofar as his ability to aid counsel, assist in his own defense, recall evidence and to give testimony if called upon to do so. The only difficulty would be his difficulty in recalling relevant material while he was under the influence of either alcohol and/or cocaine. Psychologically, and perhaps legally speaking, this man, because he is expressing and feeling considerable remorse and guilt, may be inclined to exert less effort towards his own defense but I do not feel that it is necessarily a major consideration. It is

the story of an ordinarily law-abiding intelligent member of society who became involved with alcohol and drugs to such an extent that he lost his wife, his job, and placed his entire future in serious jeopardy.

I feel this is a tragic case that involved the death of three people and the ruination of a fourth and presents a severe indictment to anyone who would argue about the deadly and addictive qualities of cocaine abuse.

Sincerely,

/s/ Jack A. Jurasky
Jack A. Jurasky, M.D.

JAJ/mp

Psychiatric Evaluation of
William D. O'Gorman, M.D.

(letterhead information deleted in printing)

November 28, 1984

Psychiatric Evaluation
Case #JC 3083-84F
Richard Allen Moran
Date of Examination: 9/12/84
Place: Clark County Jail
Time: 8:00 p.m. to 8:51 p.m.

CHIEF COMPLAINTS:

The patient stated that he is aware he is being charged with 1st degree murder. He stated that he does not recall, specifically, shooting two people in the bar, but he is fully aware of the circumstances, which he claimed he learned later. He stated, that following the knowledge that he gained from this, two days later he decided to kill himself, and expressed no particular worry, regarding this.

It was his decision, that he would kill his ex-wife, before he shot himself, in order that she would be with him, when he died, and he would not be alone. He also

reported that he has been depressed, "I'm not a nice guy, anymore".

HISTORY OF PRESENT ILLNESS:

The patient reported that he has a long history of drug abuse, starting at the age of 14, when he began to take LSD. He reports a 100 times, he has had trips, but never a bad one. At 15, he started drinking. He did acknowledge, that he began the steady use of cocaine in 1983. By February the 5th, 1984, he lost his job at the Bingo Palace, after having been employed there for 5½ years, because of a change in his personality. He stated that he had subsequently been a heavy user of cocaine, and experimented with all sorts of drugs. "My whole life has been drugs."

He stated that he has used much speed, and would go two and three days, without sleep. This particular reference to the use of cocaine, which he has free-based. He reported that approximately 10 days prior

to the incident in the Red Pearl Bar, he was a heavy user of cocaine and used as much as he could get his hands on. He stated that he used up all his money, spending it on cocaine. He stated that he has a severe need, to continue to use it.

He did report that he shot himself, in the abdomen, with a pistol, and was surprised that he would live. He reported the incident of the murder of two people, as August the 11th of 1984.

HISTORY OF PAST ILLNESS:

The patient stated that he had mumps in childhood. He had an episode, in which he had incontinence of urine, in February, 1984. He also reported that he had a "seizure" in jail, on August 28, 1984, also manifested by loss of control of bladder. He has had an injury to a knee cartilage, when he was 15, no surgery. He believes he has arthritis in his right knee.

FAMILY HISTORY:

He was born in Big Springs, Texas, 2/7/54. The family moved to Niagara Falls, New York for 23 years. He came to Las Vegas, with a friend of his, to look for work.

His father is deceased, age 55, cancer of the lung and stroke, with a heart attack. He had been employed by the New York Central Railroad. His mother is age 53, alive and well, lives in West Palm Beach, with a son, is a waitress and companion. He stated that his parents divorced, when he was age 14, they had trouble for several years, prior to the divorce. His reaction to this, was that he cried.

He has two brothers, age 33 and 24. The older is in good health, a psychiatric nurse at Cleveland Clinic, Cleveland, Ohio. His younger brother is single, works in a factory and lives with his mother in Florida. He has three sisters, 34, 32 and 25, all are

married and in good health. The oldest is a homemaker in Detroit, the middle sister is a homemaker in West Palm Beach, and the youngest sister is manager of a bar in Moscow, Idaho. He reports that he had a happy childhood.

SCHOOL HISTORY:

He stated that he had trouble spelling, in school. He graduated from high school, at 18, in 1972. He was a C student.

NORMAL PERSONALITY:

A normal personality described by the patient. He states that he has always been easy going and had a quick wit. He would make permanent friends. He was good humored, sensitive, he denies ever being quick tempered. He was always easy-come, easy-go. He denies being a worrier, he was never moody. He reports that he has been polite and well mannered. He did state, that if he were drinking, he would do things and black out at times. This he observed

in the past two to three years. He would also describe episodes of violence when he was drinking.

MARITAL HISTORY:

He married the first time, at the age of 28, October 17, 1982, his bride was 24. He divorced her in September of 1983, he did not know why, but it was a mutual agreement. He reported that his wife was born in Las Vegas, had one year of college and was a cocktail waitress. He stated that she used drugs with him, such as pot and ludes.

RECREATIONAL HISTORY:

He stated that he enjoyed gun collecting and target shooting; flying, camping and four-wheel drive. He was a rock hunter. He did very little reading.

MENTAL EXAMINATION:

Appearance: This is a 30 year old, divorced, Caucasian male.

Stream of Mental Activity: He was quite factual and open, but very depressed and

showed much tearing in talking about the episodes that led up to his present incarceration, particularly in talking about his ex-wife.

Emotion: Depressed.

Content of Thought: The patient is knowledgeable that he is being held on a 1st degree charge of murder. He stated that at the time of the shooting at the Red Pearl, he did not remember the events, because he had been drinking excessively, and was high on cocaine. He did realize what had happened, two days later, and decides to kill himself. He claimed he was not worried. Before he decided to shoot himself, he intended to kill his ex-wife, which he did, and then layed [sic] down on the bed, and shot himself, in the abdomen. Subsequent to his arrest, he has acknowledged the abnormalities of his behavior, and he expresses a desire to accept capital punishment.

PSYCHOLOGICAL TESTS:

An organic integrity test revealed 75% form, 25% color a measurement of anxiety, without disorganization.

Other psychiatric tests were not administered to him on the date of the examination.

It is the opinion of this examiner, that the patient is knowledgeable of the charges being made against him. He can assist his attorney, in his own defense, if he so desires. He is fully cognizant of the penalties if convicted.

Respectfully yours,

/s/ William D. O'Gorman M.D.
William D. O'Gorman M.D.

WDO'G: nh

Case No. C67482
Dept. No. XII

IN THE EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA, Plaintiff, vs. RICHARD A. MORAN, Defendant.	REPORTER'S TRANSCRIPT OF PLEA

Filed: February 5, 1985

BEFORE THE HONORABLE MYRON E. LEAVITT,
DISTRICT JUDGE

Wednesday, November 28, 1984
1:30 o'clock p.m.

APPEARANCES:

For the State: THOMAS LEEN, ESQ.
Deputy District Attorney

For the Defendant: ROBERT MILLER, ESQ.
and
JAMES GUBLER, ESQ.
Deputy Public
Defenders

Reported by: LAURIE H. WEBB
Official Court Reporter
C.S.R. No. 50

LAS VEGAS, CLARK COUNTY, NEVADA,
WED. NOVEMBER 28, 1984

1:30 o'clock P.M.

-oOo-

P R O C E E D I N G S

THE COURT: This is Case No. 67482 and Case No. C67483, the State of Nevada versus Richard A. Moran.

Let the record show the presence of the defendant in custody.

Let the record also show the presence of the Public Defenders in this case, Mr. Miller and Mr. Gubler.

Let the record also show the presence of the Deputy District Attorney, Mr. Tom Leen.

It is my understanding that the defendant desired to withdraw his previous plea of not guilty in these cases and enter a plea of guilty to all counts in both cases; is that correct?

THE DEFENDANT: That is correct.

THE COURT: And I also understand that the defendant desires to discharge the

public defender and waive his right to the assistance of an attorney in these proceedings; is that correct?

THE DEFENDANT: Yeah.

THE COURT: Did the Public Defender's Office conduct a investigation as to the competency of this defendant?

MR. GUBLER: We did, your Honor. On September 19, the defendant was interviewed by Dr. Jurasky who prepared a report, which I've provided the Court a copy of that report, as well as Mr. Leen.

Basically what he finds in there is that the defendant is competent to stand trial.

Also, he was interviewed by Dr. O'Gorman on or about that same date of September 19. That report has not been prepared yet.

I've spoken to Dr. O'Gorman and his findings are similar to Dr. Jurasky's, that he is competent to stand trial and that at the time of these alleged incidences, he

could distinguish between right and wrong and also understood the nature of his acts.

THE COURT: The report from Dr. Jurasky will be made a part of the record in this case.

The Court has read the report of Dr. Jurasky and based upon the representation by the Deputy Public Defender regarding Dr. O'Gorman's findings, the Court at this time finds that the defendant is competent in that he knew the nature and quality of his acts, had the capacity to determine right from wrong; that he understands the nature of the criminal charges against him and is able to assist in his defense of such charges, or against the pronouncement of the judgment thereafter; that he knows the consequences of entering a plea of guilty to the charges; and that he can intelligently and knowingly waive his constitutional right to assistance of an attorney.

Now, at this time, Mr. Moran, I'm going to inform you that under the Sixth and Fourteenth Amendment to the United States Constitution and Article 1 Section 8 of the Nevada State Constitution, you are guaranteed the right to the assistance by an attorney at all stages of a criminal proceeding before you can be validly convicted and punished.

The defendant does have the right to represent himself in a criminal case and manage and conduct his own defense. He has the basic right to defend himself if he truly wants to do so.

The Court cannot force a lawyer upon you if you insist that you want to conduct your own defense. But you must knowingly and intelligently waive your constitutional right to the assistance of counsel.

You must be made aware of the dangers and the disadvantages of self-representation.

The criminal justice system is not available to you as an instrument of self-destruction, but it does not prevent a defendant from acknowledging guilt when fully advised of all of its implications and capable of understanding them.

Let me point out to you first, Mr. Moran, that I think it would be a very serious mistake on your part to discharge the public defender and waive your right to assistance of an attorney in these cases.

I'm going to explain to you some of those disadvantages. As I stated to you earlier, you have the right to the assistance of an attorney at all stages of these proceedings.

Criminal law is a complex area where experience and professional training is required and desirable. An attorney is trained in the law, has the skill and experience to properly conduct a defense to criminal charges. An attorney can properly weigh the factors involved in the guilty

plea as opposed to submitting the case to a jury.

An attorney knows all of the elements in an offense and can determine by discovery and investigation if, in fact, the offense was committed.

An attorney knows the possible defenses that may be presented on a defendant's behalf and by the use of these defenses may be able to prove you innocent.

Trials present hard choices as to strategy and to tactics, and even attorneys can differ as to the proper defense to make. An attorney knows the degree of proof that the State must meet to find you guilty.

The State must prove you guilty beyond a reasonable doubt. An attorney, by investigation and review of the State's evidence, may determine that the State cannot prove it's case and, therefore, you cannot be convicted.

You must follow all of the legal rules involved in the criminal proceedings even though you may not know them. And you alone must argue your case before a three-judge panel, should you plead guilty, or before a judge, should you plead guilty.

Do you know that the sentence in this Case No. C67482 and to the two charges in the other case is the death penalty?

THE DEFENDANT: Uh-huh.

THE COURT: You understand that?

THE DEFENDANT: Yeah.

THE COURT: Do you understand that the State has filed a notice in both cases that they will seek the death penalty?

THE DEFENDANT: Yeah, I do.

THE COURT: You're aware of that?

THE DEFENDANT: Uh-huh.

THE COURT: Do you know that you have a right to a speedy and public trial by an impartial jury, free of any pretrial publicity at which time it would be the

burden of the prosecution to prove your guilt beyond a reasonable doubt?

Do you understand that?

THE DEFENDANT: Yeah, I understand.

THE COURT: You also know that you may disqualify jurors who are biased against you, and that you can disqualify eight prospective jurors without any cause or reason; do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand that an attorney is trained and qualified to determine whether or not if a juror may be biased against you?

Do you understand that you have the right to be confronted by witnesses against you and have the right to cross-examine those witnesses and that an attorney is qualified and trained to conduct such a cross-examination?

THE DEFENDANT: Yeah, I understand.

THE COURT: Do you understand that you have a right to compel witnesses by court order to attend and testify on your behalf? Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand that you have the right to argue your case to a jury or a three-judge panel and that an attorney is trained to present effective arguments to a jury or to a judge; and you understand by not having an attorney, you will not have that person skilled to represent you?

THE DEFENDANT: Yeah, I understand.

THE COURT: Do you understand that you have a right to testify on your own behalf but you're not required to do so; and should you not testify, the prosecution cannot comment upon that fact in its argument to the jury and such a decision on whether or not to testify is better left to one trained and skilled in the law; do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: Does the defendant understand that should he waive his right to an attorney, that in all probability, you will not be able to complain at a later time that your right to the assistance of an attorney under the Sixth and Fourteenth Amendment to the United States Constitution were violated; do you understand that?

THE DEFENDANT: Yes, I understand.

THE COURT: Once you decide on self-representation, you may not change your mind in the middle of the proceedings; do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand the nature of the charges that have been brought against you?

THE DEFENDANT: Yes.

THE COURT: Have you discussed these with the Public Defenders?

THE DEFENDANT: Yes.

THE COURT: Do you understand the statutory offenses that are included within the charges and that you could possibly be found guilty of a lesser included offense?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand the possible defenses to the charges in these cases?

THE DEFENDANT: Yes.

THE COURT: Have you discussed these with the Public Defenders?

THE DEFENDANT: Yes, I have.

THE COURT: Does the defendant understand the aggravating circumstances set forth in NRS 200.033 and the right to present mitigating circumstances as set forth in NRS 200.035?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand that in the case where there is an intention on the part of the State to seek the death penalty, that

you have a right to present mitigating circumstances under Nevada law?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand that?

THE DEFENDANT: Yeah.

THE COURT: Do you understand that an attorney can research the law for similar cases and present possible defenses based upon those materials?

THE DEFENDANT: Yes, I do.

THE COURT: How old are you?

THE DEFENDANT: Thirty.

THE COURT: What is your education?

THE DEFENDANT: High School.

THE COURT: Do you understand, read and write the English language?

THE DEFENDANT: Uh-huh.

THE COURT: What has been your prior court experiences?

THE DEFENDANT: None.

THE COURT: Has anybody made any inducements, promises or threats towards you?

THE DEFENDANT: Uh-uh.

THE COURT: Do you understand that the assistance of an attorney would not be a financial burden upon you?

THE DEFENDANT: Yeah, I know.

THE COURT: That the attorney will be paid-- will be furnished to you without any expense to you?

THE DEFENDANT: Uh-huh.

THE COURT: Do you understand the seriousness of these charges?

THE DEFENDANT: Yes.

THE COURT: Now, I know that since you've never had any prior court experience, you do not have knowledge of the legal proceedings and you originally pleaded not guilty in this case.

THE DEFENDANT: Right.

THE COURT: Would you state to the Court the reasons why you have elected to represent yourself.

THE DEFENDANT: Because we don't-- the Public Defenders and myself don't agree on the way they should defend me.

THE COURT: Well, how do you believe you should be defended?

THE DEFENDANT: I don't want them to present any mitigating evidence. I don't want this presented, and they have to -- they feel that they have to.

THE COURT: In other words, you do not want to have any -- put up any defense, in effect, is what you're saying?

THE DEFENDANT: Correct.

THE COURT: That you want to enter a plea to this matter and you do not want to present any mitigating circumstances whatsoever before a three-judge panel?

THE DEFENDANT: Right.

THE COURT: Are you presently under the influence of any drug or alcohol?

THE DEFENDANT: Just what they give me in, you know, medications.

THE COURT: In the event that I should discharge the public defender in this case, do you wish the Court to appoint standby counsel to assist you, if and when you may request help?

Do you understand what standby counsel is?

THE DEFENDANT: Yeah.

THE COURT: In other words, I would appoint an attorney to sit in the audience during all these proceedings and should you desire their help, they would be available.

Do you wish to have the Court appoint standby counsel?

THE DEFENDANT: I don't think I'll need one.

THE COURT: Do you wish the Court to appoint an attorney to gather any mitigating

circumstances to present to the Court or panel of judges on your behalf?

THE DEFENDANT: No, I don't.

THE COURT: The public defender will be allowed to withdraw.

Do you wish to make any statement for the record, Mr. Gubler or Mr. Miller?

MR. GUBLER: I don't believe so, your Honor. I think the Court has covered it well and if we are permitted to withdraw, we'll leave the table at this time.

THE COURT: I understand that he's doing this against your advise [sic]?

MR. GUBLER: That is correct, your Honor.

THE COURT: All right. Mr. Moran, in regards to the entry of plea, are you ready to enter a plea to these cases at this time?

THE DEFENDANT: Yes.

THE COURT: Would you once again please state your age.

THE DEFENDANT: Thirty.

THE COURT: And will you please relate to the Court the extent of your education?

THE DEFENDANT: I graduated from high school.

THE COURT: You then do read, write and understand the English language?

THE DEFENDANT: Yes.

THE COURT: You have been previously provided with true copies of the Information in Case No. C67482 and Case No. C68483 wherein you have been charged as follows:

In Case No. C67482, you have been charged with murder with the use of a deadly weapon.

In Case No. C67483, you have been charged with five counts. Count I, murder with the use of a deadly weapon; Count II, murder with the use of a deadly weapon; Count III, robbery with use of a deadly weapon; Count IV, robbery with use of a deadly weapon; and Count V, first degree arson.

You have previously entered a plea of not guilty to the charge in Case No. C67482 and

not guilty to all five counts in Case No. C67483.

Do you now wish to withdraw those pleas of not guilty?

THE DEFENDANT: Yes, I do.

THE COURT: The pleas of not guilty previously entered herein are hereby withdrawn.

Do you understand the nature of the charges contained in both of the Informations?

THE DEFENDANT: Yes.

THE COURT: And have you discussed these charges with your previous attorneys?

THE DEFENDANT: Yes, I have.

THE COURT: Before you enter a plea today, again, I will advise you that the State will seek the death penalty as to the murder charges in both of these cases.

Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: As to Case No. C67482, does the defendant have a copy of that Information.

MR. LEEN: I think his previous counsel has one, but I'll give him another one.

THE COURT: Here's a copy. Would you furnish him with a copy.

Let the record show that the defendant is being furnished with a copy of the Information in Case No. C68482 [sic].

In that case, Mr. Moran, you're being charged with murder with the use of a deadly weapon, a felony. How do you plead to the charge; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: In Case No. C67483, do you have a copy of the Information in that case?

THE DEFENDANT: Uh-uh.

MR. LEEN: I'm giving him right now, Judge.

THE COURT: All right. You now have a true copy of the Information in Case No.

C67483 in which you have been charged with five counts.

In Count I, you have been charged with murder with the use of a deadly weapon. How do you plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: As to Count II, murder with the use of a deadly weapon, how do you plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: As to Count III, robbery with the use of a deadly weapon, how do you plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: As to Count IV, robbery with the use of a deadly weapon, how do you plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: As to Count V, first degree arson, how do you plead; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Before I can accept your pleas of guilty, I must be satisfied that your pleas are freely and voluntarily given and that you fully understand the nature of the charges against you and the consequences of such a plea.

Now, Mr. Moran, you may sit down. This will take a little while.

Do you make the pleas in these cases freely and voluntarily?

THE DEFENDANT: Yes.

THE COURT: Have any threats been made against you or anyone closely associated with you in order to cause you to make these pleas of guilty?

THE DEFENDANT: No.

THE COURT: Has anyone made any promises to you regarding this case in order to induce you to plead guilty?

THE DEFENDANT: No.

THE COURT: Do you understand the elements of the crime of murder?

THE DEFENDANT: Uh-huh.

THE COURT: As it applies to this case, murder is the unlawful killing of a human being with malice aforethought, either express or implied.

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice shall be implied when no considerable provocation appears, or when all of the circumstances of the killing show an abandoned and malignant heart.

In this case, we're talking about first degree murder. Murder of the first degree is that which is perpetrated by means of poison, or lying in wait, torture, or by any other kind of willful, deliberate and premeditated killing; or that which was committed in the perpetration or attempted perpetration of a sexual assault, kidnapping, arson, robbery, burglary or sexual

molestation of a child under the age of fourteen years.

All murder which is perpetrated by any kind of willful, deliberate and premeditated killing with malice aforethought is murder of the first degree.

"Deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed cause of action.

The word "premeditated" means considered beforehand. The killing must be preceded and accompanied by a clear, deliberate intent on the part of the defendant to kill, which was a result of deliberation and premeditation, that it must have been formed upon a pre-existing reflection and not under a sudden heat of passion or other conditions precluding the idea of deliberation; or, as I stated to you earlier, could be committed in the perpetration of a robbery or an arson.

There are other lesser included offenses within the charge of murder which you could be convicted.

You could be found guilty of second degree murder. Second degree murder is the unlawful killing of a human being with malice aforethought when there is manifested intention unlawfully to kill a human being, but the evidence is insufficient to establish deliberation and premeditation.

Manslaughter is the killing of a human being without malice, express or implied, and is also a lesser included offense.

In this case you have been further charged with the use of a deadly weapon in committing murder.

You have been charged with robbery. Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury to the person and against his will.

In addition, you're charged with using a deadly weapon, a firearm in this case. You could be convicted of lesser included offense of larceny and larceny from the person in the robbery case.

First degree arson occurs when a person willfully, and maliciously sets fire to and causes to be burned a structure, whether the property of himself or another.

The State must prove all of these elements of the crimes which you have been charged beyond a reasonable doubt if you should go to trial. By entering a plea of guilty in these cases, you waive the right to go to a jury trial.

Under Nevada law, a person who is convicted of murder or who pleads guilty to murder is not entitled to have his sentence suspended and be placed on probation.

Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: A person who is convicted of or who pleads guilty to murder with a deadly weapon or robbery with a deadly weapon is not entitled to have his sentence suspended and be place on probation.

That any person who uses a firearm or other deadly weapon in the commission of a crime shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for such crime, and the sentence shall run consecutively with the sentence prescribed by the statute for such crime.

Every person convicted of murder in the first degree shall be punished by death, only if one or more aggravating circumstances are found, and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstances.

Otherwise, by imprisonment in the state prison for life, with or without the possibility of parole. If the penalty is fixed at life imprisonment with the possibility of parole, eligibility of parole begins when a minimum of ten years has been served.

In this case, since you are charged with the use of a deadly weapon, the penalty for each charge would be doubled and run consecutively. If the punishment were to be fixed at life imprisonment, for example, for the murder charges, you would be punished to two life imprisonments for each charge to run consecutively.

The punishment for robbery is not less than one year nor more than fifteen years. Since you are charged with using a deadly weapon in the commission of a robbery, any sentence of imprisonment would be enhanced by any additional like term which would run consecutively.

On the robbery charge you could be imprisoned for fifteen years and an additional consecutive fifteen years for the use of a deadly weapon in the commission of a robbery on each count.

The punishment for first degree arson is a maximum of fifteen years and you may be fined also in the sum of $15,000.

Do you understand those punishments as I have related to you?

THE DEFENDANT: Yes, sir.

THE COURT: The death penalty for first degree murder in the State of Nevada, as I have explained to you, is determined by the balancing of aggravating circumstances against mitigating circumstances.

Circumstances which first degree murder may be aggravated and thus invoke the death penalty as are follows:

The murder was committed by a person under sentence of imprisonment.

The murder was committed by a person who was previously convicted of another murder or of a felony involving the use or threat of violence to the person of another.

The murder was committed by a person who knowingly created a great risk of death to more than one person by means of a weapon, device, or course of action which would normally be hazardous to the lives of more than one person.

The murder was committed while the person was engaged, alone or with others, in the commission of or an attempt to commit or flight after committing or attempting to commit any robbery, sexual assault, arson in the first degree, burglary or kidnapping in the first degree, and the persons charged killed or attempted to kill the person murdered, or knew or had reason to know that life would be taken or lethal force used.

That the murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

That the murder was committed by a person, for himself or another, for the purpose of receiving money or any other thing of monetary value.

The murder was committed upon a peace officer or fireman who was killed while engaged in the performance of his official duty or because of an act performed in his official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer or a fireman.

For purpose of this subsection, "peace officer" means Sheriffs of counties and their deputies, marshalls and policeman of cities and towns, the chief and agents of the Investigation Division of the Department of Motor Vehicles, the personnel of the Nevada Highway Patrol, and the director, deputy director, correctional officers and

other employees of the Department of Prisons when carrying out the duties prescribed by the director of the department.

The murder involved torture, depravity of mind or the mutilation of the victim.

The murder was committed upon one or more persons at random and without apparent motive.

Do you understand that the State must show at least one of these aggravating circumstances before the death penalty can be invoked in this case?

THE DEFENDANT: Yes.

THE COURT: You're also entitled to present evidence in mitigation. Circumstances which first degree murder may be mitigated are as follows:

That the defendant has no significant history of prior criminal activity.

The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.

The victim was a participant in the defendant's criminal conduct or consented to the act.

That the defendant was an accomplice in a murder committed by another person and his participation of the murder was relatively minor.

The defendant acted under duress or under the domination of another person.

The youth of the defendant at the time of the crime and any other mitigating circumstance.

If I accept your plea of guilty, a separate penalty hearing will be held to determine whether you should be sentenced to death or life imprisonment on the three murder with a deadly weapon charges; do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: The hearing will be before a three-judge panel made up of myself and two other district judges from other judi-

cial districts in Nevada which will be appointed by the Supreme Court.

After the hearing, the judges will determine if the aggravating circumstance or circumstances I previously read to you exist in this case, and whether or not mitigating circumstance or circumstances are found to exist.

Upon these findings you could be sentenced to life imprisonment with or without the possibility of parole or death. Any life sentence would be enhanced by an additional life sentence because of the use of a deadly weapon in the commission of the crime, as I've previously explained to you.

As I also previously explained to you, there is no probation for murder with a deadly weapon.

I will be the sole sentencing judge on the two robbery with the use of deadly weapon charges for which there is no probation, and the arson charge.

The three-judge panel may impose a death penalty only if it finds at least one of the aggravating circumstance and further finds there are no mitigating circumstance or circumstances sufficient to outweigh the aggravating circumstance or circumstances found.

Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: The death sentence can be impose only if all three judges agree. Any other sentence may be imposed by only a vote of the majority of the judges.

By entering your plea of guilty, you waive and give up the right to have a trial jury make the determination that the aggravating circumstance or circumstances outweigh the mitigating circumstance or circumstances and you leave it up to the three-judge panel.

Do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: The judgment of the panel of judges is automatically appealed to the Nevada Supreme Court, unless you affirmatively waive the appeal, within 30 days after rendition of sentence.

The appeal will be taken to review the record to determine the following things:

If there were any errors enumerated by way of appeal; whether the evidence supports the finding of the aggravating circumstance or circumstances; whether the sentence of death was imposed under the influence of passion, prejudice or any arbitrary factor; and whether the sentence of death is excessive or disproportionate to the penalty impose in similar cases in this State, considering both the crime and the defendant.

The Supreme Court, when reviewing a death sentence, may either affirm the sentence of death, set the sentence aside and remand the case for a new penalty hearing if the

original penalty hearing was before a jury, before a newly impaneled jury; or if the original penalty hearing was before a panel of judges, before a panel of three district judges which shall consist, in so far as possible, of members of the original panel; or the Supreme Court could set aside the sentence of death and impose the sentence of imprisonment for life without the possibility of parole.

Do you understand all that, Mr. Moran?

THE DEFENDANT: Yes.

THE COURT: In Nevada, the death penalty is inflicted by an injection of a lethal drug.

Do you understand everything that I have explained to you at this point?

THE DEFENDANT: Yes, sir.

THE COURT: Do you still desire to enter a plea of guilty?

THE DEFENDANT: Yes.

THE COURT: By entering a plea of guilty, you're giving up certain valuable rights.

As I indicated to you, you have a right to a speedy and public trial by an impartial jury, free of any pretrial publicity, at which time it would be the burden of the prosecution to prove your guilt beyond a reasonable doubt.

Do you understand that right?

THE DEFENDANT: Uh-huh.

THE COURT: Do you wish to waive and give up that right?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that you have the right to be confronted by the witnesses and the accusers against you and cross-examine them?

THE DEFENDANT: Yes.

THE COURT: Do you wish to waive and give up that right?

THE DEFENDANT: Yes.

THE COURT: You have a right to compel witnesses to attend court and testify on your behalf. Do you understand that right?

THE DEFENDANT: Yes.

THE COURT: Do you wish to waive and give up that right?

THE DEFENDANT: Yes.

THE COURT: You have the right to testify on your own behalf and the right to refuse to testify; that is, to remain silent, in which event the prosecution cannot comment to the jury upon that fact.

Do you understand that right?

THE DEFENDANT: Yes.

THE COURT: Do you wish to waive and give up that right?

THE DEFENDANT: Yes.

THE COURT: By entering a plea of guilty, you're giving up all of these rights. Knowing that you have these right, do you still wish to enter a plea of guilty?

THE DEFENDANT: Yes.

THE COURT: Are you pleading guilty because in truth and in fact you are guilty?

THE DEFENDANT: Yes.

THE COURT: In Case No. C67482 -- you have the Information in front of you?

THE DEFENDANT: Yes, sir, uh-huh.

THE COURT: On the 11th day of August, 1984, you were charged that within the County of Clark in the State of Nevada that you did then and there, without authority of law and with malice aforethought willfully and feloniously kill Linda K. Vanderwoort [sic], a human being, by shooting at and into the body of said Linda K. Vandervoort with a deadly weapon: To wit, a firearm.

Do you understand all of the allegations in that information?

THE DEFENDANT: Yes.

THE COURT: Did you do those things?

THE DEFENDANT: Yes.

THE COURT: Did you do so deliberately, with premeditation and malice and aforethought --

THE DEFENDANT: Not really.

THE COURT: -- as I've explained to you?

THE DEFENDANT: No, I didn't do it -- I mean, I wasn't looking to kill her, but she ended up dead.

THE COURT: Well, you're charged that you did, with malice aforethought, shoot at and into the body of Linda K. Vandervoort with a deadly weapon, a firearm.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: And did you do so deliberately and with premeditation?

THE DEFENDANT: No.

THE COURT: Did you think about it before you did it?

THE DEFENDANT: Not really.

THE COURT: Did you do it deliberately?

THE DEFENDANT: I don't know. I mean, I don't know what you mean by deliberately. I mean, I pulled the trigger on purpose, but I didn't plan on doing it; you know what I mean?

THE COURT: Well, I've previously explained to you what is meant by deliberation and premeditation. Deliberate means that you arrived at or determined as a result of careful thought and weighing the consideration for and against the proposed action.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: And the word premeditated means considered beforehand. Did you do that?

THE DEFENDANT: Yes.

THE COURT: And you remember the definition I gave you regarding malice aforethought?

THE DEFENDANT: Uh-huh.

THE COURT: A malice can be either expressed or implied; that express malice is the deliberate intention to unlawfully take away the life of a fellow creature.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: And in Case No. C67483 -- you have the Information in front of you, Mr. Moran?

THE DEFENDANT: Yes.

THE COURT: In that case you're charged with five counts. On the second day of August, 1984, in the County of Clark in the State of Nevada you're charged in Count I with murder with the use of a deadly weapon in that you did then and there, without authority of law and with malice aforethought willfully and feloniously kill Russell J. Rhoads, a human being, by shooting at and into the body of said Russell J. Rhoads with a deadly weapon: To wit, a firearm.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: And did you do that at the time of the perpetration of a robbery?

THE DEFENDANT: Yes.

THE COURT: In Count II, murder with the use of a deadly weapon, you have been charged that you did then and there, without authority of law and with malice aforethought willfully and feloniously kill Sandra Devere, a human being, by shooting at and into the body of said Sandra Devere with a deadly weapon: To wit, a firearm.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: And did you do that during the perpetration of that robbery?

THE DEFENDANT: Yes.

THE COURT: In Count No. III, you're charged that you did then and there unlawfully, willfully and feloniously take personal property: To wit, lawful money of

the United States from the person of Russell J. Rhoads, or in his presence, by means of force or violence or fear of injury to and without the consent and against the will of said Russell J. Rhoads, said defendant -- being you, Mr. Moran, using a deadly weapon: To wit, a firearm, during the commission of said crime.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: In Count IV, you are charged with robbery with the use of a deadly weapon in that you did then and there willfully, unlawfully and feloniously take personal property: To wit, lawful money of the United States from the person of Sandra Devere, or in her presence, by means of force or violence or fear of injury to and without the consent and against the will of said Sandra Devere, said defendant using a deadly weapon: To wit, a firearm, during the commission of said crime.

Did you do that?

THE DEFENDANT: Yes.

THE COURT: In Count No [sic] V, you were charged that you did then and there willfully, unlawfully, maliciously and feloniously set fire to and thereby cause to be burned a certain structure located at 1875 South Decatur, Las Vegas, Clark County, Nevada known as the Red Pearl Saloon, said structure being then and there the property of Ralph Warren, by the use of open flame and combustible materials and/or by a manner and means unknown.

Did you do that?

THE DEFENDANT: Uh-huh, yes.

THE COURT: Did all of these events that I have read to you occur in the County of Clark, State of Nevada?

THE DEFENDANT: Yes.

THE COURT: Did you know at the time that you did these events that what you were

doing was against the laws of the State of Nevada?

THE DEFENDANT: Yes.

THE COURT: Did you also know that what you were doing was wrong?

THE DEFENDANT: Yes.

THE COURT: The Court finds that the defendant's plea of guilty to the charge in Case No. C67482, and the defendant's pleas of guilty to the charges in five counts in Case No. C67483 to be freely and voluntarily given; further finds that the defendant understands the nature of the offenses and the consequences of his pleas and therefore accepts the pleas of guilty.

By virtue of your plea of guilty in Case No. C67482, the Court at this time adjudges you guilty of first degree murder with the use of a deadly weapon.

And by virtue of your plea of guilty in Case No. C67483, the Court adjudges you guilty of first degree murder with the use

of a deadly weapon as to Count No. I; guilty of first degree murder with use of a deadly weapon as to Count No. II; guilty of robbery with the use of a deadly weapon as to Count No. III; guilty of robbery with use of a deadly weapon as to Count No. IV; and guilty of first degree arson as to Count No. V.

This matter will be referred to the Department of Parole and Probation for a presentence investigation report.

Do you wish to have any witnesses present on your behalf at the penalty hearing in this matter?

THE DEFENDANT: No.

THE COURT: The Court will issue subpoenas for any witnesses you would like to be present; do you understand that?

THE DEFENDANT: Yes.

THE COURT: Should you change your mind, would you inform the Court?

THE DEFENDANT: Yes.

THE COURT: Case No. C67482 and Case No. C67483, Counts I and II will be set over for a penalty hearing with a panel of three district judges, pursuant to NRS 175.551 to be commenced at the earliest possible date.

I will inform the Chief Justice of the Supreme Court of what has transpired here today. I have a vacancy in my calendar during the week of January 21, 1985. I will attempt to have the penalty hearing heard at that time.

As to Case No. C67483, Counts No. III, IV and V will be set over for imposition of sentence and rendition of judgment on January 21, 1985 at 10:00 a.m.

The trial dates in these cases of January 14, 1985 and January 28, 1985 are hereby vacated.

Do you have anything you wish to tell the Court at this time, Mr. Moran?

THE DEFENDANT: No.

THE COURT: Do you understand that I am going to inform the Chief Justice of the Supreme Court and request that he appoint to other district judges from different districts to be present for a three-judge panel to determine the penalty in this case regarding the murder and the murder with deadly weapon charges, and that that hearing before that three-judge panel will probably commence sometime during the week of January 21, 1985; do you understand that?

THE DEFENDANT: Uh-huh.

THE COURT: And that I will request that it be heard at that time. The sentencing on the other charges will be imposed and the judgment rendered on January 21 at 10:00 a.m.

Do you have any questions?

THE DEFENDANT: No.

THE COURT: Defendant will be remanded to the custody of the sheriff.

Court will be in recess.

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

/s/ LAURIE H. WEBB, C.S.R. No. 50
Official Court Reporter

CASE NO. C67482 and C67483

DEPT. NO. XII

DISTRICT COURT

CLARK COUNTY, NEVADA

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THE STATE OF NEVADA, Plaintiff, vs. RICHARD ALLEN MORAN, Defendant.	REPORTER'S TRANSCRIPT OF PETITION FOR POST-CONVICTION RELIEF

BEFORE THE HON. MYRON LEAVITT,
DISTRICT JUDGE

Wednesday, April 20, 1988

10:00 A.M.

APPEARANCES:

For the State: DANIEL M. SEATON, ESQ.
Deputy District Attorney

For the Defendant: CAL J. POTTER, III, ESQ.

Reported by: LAURIE H. WEBB
Official Court Reporter
C.S.R. No. 50

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. . . .

WILLIAM D. O'GORMAN,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POTTER:

Q. Would you state your name for the record please.

A. William D. O'Gorman.

Q. What is your profession?

A. I'm a psychiatrist.

Q. And you've qualified as an expert in this and other courts; is that correct?

A. Yes, I have.

MR. POTTER: Your Honor, for the purposes of this hearing, Mr. Seaton has stipulated that he is an expert.

MR. SEATON: That is correct, Judge.

THE COURT: The record will so show.

MR. POTTER:

Q. And pursuant to a court order, did you have occasion to interview Mr. Moran, the gentleman seated to my left?

A. Yes, I did, in the County Jail on the 12th of September of 1984.

Q. All right. And as a result, of that interview, you wrote a report and submitted that report to the Court; is that correct?

A. Yes, I did.

Q. And do you have a copy of that report with you today?

A. Yes, I do.

Q. And are you able to remember the conclusions that you reached in that report?

A. The conclusions that I reached in the report dealt with the fact that Mr. Moran was knowledgeable after the fact of crimes that had been committed, he could assist his attorney in his own defense if he so desired.

Q. Did you also reach any opinions about his ability to comprehend the crimes that

he had been charged with at the time that the crimes would have been committed?

A. He told me at that time that he did not remember the actual crimes, but was informed afterwards and this in turn precipitated a reaction on his part that he wanted to die, take his life, but also that he would want to have his ex-wife accompany him and did, in fact, but he does not recall the actual incidents at the time.

Q. And did he relate to you whether, in fact, he was under the influence of drugs at the time of these crimes?

A. Yes, he did. And his drug history goes back a long way to the age of 14 and subsequently thereafter with all of the street drugs, LSD a hundred times, on to speed, to marijuana and then a heavy use of cocaine that began about 1983, very heavy use prior to the incident of the Red Pearl incident and his subsequent reaction after-

wards that precipitated his desire to kill himself.

THE COURT: For the record, Mr. Potter, I think we ought to make it clear, it's pretty obvious you've called him as a witness, but the doctor/patient relationship privilege has been waived in this case?

MR. POTTER: That is correct, Your Honor.

THE COURT: For the record. All right. You may proceed.

MR. POTTER:

Q. Dr. O'Gorman, do you have an opinion about Mr. Moran's ability to comprehend what was occurring at the time of these crimes that you've alluded to concerning the cocaine addiction, what effect that would have on his perception?

A. Well, at the actual time, if he were under the influence of large amounts of cocaine, particularly free-base or crack, I don't think he could form intent at that moment.

My experience with cocaine is that it's very, very devastating, that those who are indulgent in this do not question motivation, their own motivation at all. They are consumed with the desire to get more, over and above any restrictions and restraints.

Q. And that opinion is based upon a reasonable degree of medical certainty; is that correct?

A. Yes.

Q. What experience have you had in dealing with individuals who are under the influence of free-base or crack?

A. Well, I can't give you the specific number, but there are quite a few. It's become more and more common, and my experience with those that I have seen, they are extremely quick, they are impulsive, they don't question their own behavior or actions at all. And right or wrong, they just blindly go ahead.

MR. POTTER: All right. I would pass the witness at this time.

THE COURT: Mr. Seaton, you may cross-examine.

MR. SEATON: Thank you, Judge.

CROSS-EXAMINATION

BY MR. SEATON:

Q. Your interview was on September 12, 1984, Doctor?

A. Yes, sir.

Q. For how long a period of time did it last?

A. I think I recorded the time of 51 minutes.

Q. Where were you located during that period of time?

A. The county jail. It was -- I believe -- it was the Clark County Detention Center, I'm not certain now.

Q. Was it a face-to-face interview?

A. Yes, it was.

Q. It wasn't through the window with the telephones?

A. No, it was not.

Q. Were the two of you alone in the room together?

A. Yes.

Q. For the entire 51 minutes?

A. Yes, sir.

Q. Was a guard nearby on the outside, do you know?

A. No, they usually lock the door and leave.

Q. Okay. So I would take it that there was no fear -- you didn't have any fear of Mr. Moran at that time?

A. No.

Q. Okay. How would you describe his demeanor during that interview?

A. I would say he was depressed.

Q. Did he readily exchange information with you?

A. Yes.

Q. No hesitancy or reluctance?

A. Not that I could discern.

Q. Was he intelligent in his answers to you?

A. Yes.

Q. You could understand everything he said?

A. Yes, I could.

Q. How about eye contact, do you remember if he kept eye contact or not?

A. Well, I don't recall. I believe he did. I'm not sure.

Q. There was nothing in that interview to make you concerned about how willing he was to exchange information with you?

A. No, I think he was very open.

Q. To try to phrase this a little bit in some of the words we use in our own legal parlance, was the information he gave to you at that time, then, knowingly and voluntarily given on his part?

A. I thought so.

Q. Okay. Now, you made a statement toward the end of your testimony with Mr. Potter that, and correct me if I misstate this, if a person is under the influence of cocaine, they can't form the intent to kill, is that your statement?

A. Well, that was my statement on the basis that they don't censor any of their impulses at all. They blindly go ahead, particularly is this true with free-base or crack.

Q. So the question, then, one would have to pose is was a person really on coke at a particular time, in other words, let's get it down in the context of Mr. Moran. He's probably going to get on the stand and say that "at the time of the killing, I was under the influence of coke."

So one would have to question and determine whether or not a person actually was on coke to know whether or not this

theory was operative at the time. Is that true?

A. I agree.

Q. And similarly, would you agree that you'd also have to determine whether or not the drug being used was, in fact, cocaine?

A. True.

Q. Wouldn't you also have to determine the quantity of cocaine taken at a given moment?

A. True.

Q. So you are not here telling us that Mr. Moran at the time he committed the killings wasn't able to formulate the intent?

A. I'm only reporting my opinion based on Mr. Moran's conversation with me at that time.

Q. Okay. So if at a later time he has told the Court that he was cognizant enough to form premeditation and intent, that would be a conflicting statement with the

information that you're basing your opinion on?

MR. POTTER: I'm going to object for purposes of the record that it assumes facts not in evidence.

MR. SEATON: Well, it's used it as a hypothetical then.

Q. Hypothetically speaking, if Mr. Moran had come into court later on and pled guilty and during the canvas during which he pled guilty he indicated to the Court's satisfaction that he was capable of forming intent and premeditation, that would be diametrically opposed to the cocaine filled information that he had given you earlier?

A. To answer your question, Mr. Moran, as far as I could see, was very depressed. He did form an intent to kill his wife before he killed himself on the basis of being very deeply, suicidally depressed.

Q. He wanted to take her with him?

A. In that respect he wanted to take her with him, in that respect he formed an intent to kill her and himself.

Q. Okay.

A. Which is a result of the depth of depression that he was in.

Q. Thank you. And lastly, with regard to hypothetically, or in general, let's say, people who are under the influence of coke, some of them, wouldn't you agree, would be able to formulate the necessary intent?

A. Again, I think it's a question of the amount and how long they had used it and their own personality.

MR. SEATON: Thank you. I have nothing further.

REDIRECT EXAMINATION

BY MR. POTTER:

Q. Dr. O'Gorman, the opinions that you've expressed on Mr. Moran are based upon your interview of Mr. Moran where you've testified that he was being candid, correct?

A. Yes.

Q. And during that interview, and you've testified to the Court today as to the timeframe involved with the Red Pearl as being a time in which he was under the influence of crack and large amounts or doses of cocaine; is that correct?

A. Yes.

Q. And that's your recollection today of Mr. Moran freely and voluntarily explaining to you what had gone on in his life at the time of these Red Pearl murders; is that correct?

A. Yes.

Q. So that when you state that your opinion is based upon a reasonable degree of medical certainty, we're not talking about a hypothetical situation, we're talking about the incident involving Mr. Moran and the facts which he told you to be true, correct?

A. I would accept his word as being truthful and honest with me as a physician.

Q. Do you have any recollection either from memory or from your notes about the quantities that were involved when you interviewed him in terms of the cocaine?

A. Only that he stated he could not get enough and he had to get more.

Q. And that he, in fact, had been under the influence for a long period of time, correct?

A. Over a period of months, but more particularly I think heavily using it ten days prior to the incident.

MR. POTTER: I don't have any other questions, your Honor.

MR. SEATON: If I might, Judge. That's a point that really interests me, Doctor.

RECROSS-EXAMINATION

BY MR. SEATON:

Q. Do you have your report with you?

A. Yes, I do.

Q. I'm looking at the first page, second from the last paragraph, in which you speak about his ten-day usage ten days prior to -- let me just read that long to you.

This particular reference to the use of cocaine which he has free-based -- oh, I'm sorry, next sentence.

He reported that approximately ten days prior to the incident in the Red Pearl bar he was a heavy user of cocaine and used as much as he could get his hands on. He stated that he used up all his money spending it on cocaine. He stated that he had a severe need to continue to use it.

If the last time he used cocaine prior to the Red Pearl killings was ten days prior, that wouldn't have any impact on his

intent, would it, at the time of the killings?

A. I can answer that in this sense: A cocaine user is compelled to keep on going. I can't honestly say what ten days would bring except that I would think that he'd be depressed after ten days.

Q. But being depressed is something entirely different from having an inactive intent due to the use of cocaine, is it not?

A. Depends on the depth of depression. If severe, it would lead to his suicide. That's why people who are depressed commit suicide.

Q. But just assuming that this language in the report is correct and that the last time he used cocaine was ten days prior to the Red Pearl bar, you can't testify here under oath as an expert, can you, that his being under the influence of cocaine had anything to do with his intent at the time of the Red Pearl killings?

MR. POTTER: For the record, I'm going to object. I don't believe that's what the facts show. I believe it shows that -- or his testimony was that he had started using the cocaine ten days prior, is what the testimony --

MR. SEATON: No, it says that ten days prior to the incident in the Red Pearl bar he was a heavy user of cocaine.

THE COURT: He's questioning regarding the facts in his report. So the objection is overruled.

MR. SEATON:

Q. And, Doctor, just for the record, I am assuming just from the way I read this, that this guy had used a lot of coke up until ten days before and he ran out of money.

Now, just to give you a fact that maybe you're not even aware of, money was taken from the Red Pearl bar which would suggest to me at least that that money was what he

needed, he went to the Red Pearl bar to get some money to go get coke.

Now, my question to you is, assuming, and that's all we're doing here, that that was a ten-day hiatus of use of cocaine prior to the Red Pearl bar killings, that would not have any impact on his capability of formulating an intent at the time of those killings?

A. Again, to answer that question, I think that if he were depressed, without the use of cocaine, which is a common thing, his motivation would be based on his depression. It was my assumption when Mr. Moran told me that he was using a great deal of cocaine up to and including the time that incident happened at Red Pearl.

Q. Even though that's not quite the way your report reads?

A. Well, that was my intent.

Q. Okay. And speaking of your intent, you've been doing this for many, many years?

A. Yes.

Q. Coming into court speaking on both sides of the sanity question. You are aware of the importance of a defendant's ability to formulate intent, are you not?

A. Yes, I am.

Q. Yet nowhere in your report did you indicate that he was not capable of formulating intent at the time of the Red Pearl killings.

A. No, I didn't approach that at all.

MR. SEATON: Thank you, Doctor. I have no further questions.

MR. POTTER: No questions.

THE COURT: You may step down, Doctor, thank you for testifying.

THE WITNESS: Thank you.

THE COURT: Call you next witness.

MR. POTTER: Call Mr. Moran.

RICHARD MORAN,

having been first duly sworn to testify to the truth, the whole truth and nothing but

the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POTTER:

Q. Would you please state your name for the record?

A. Richard Moran.

Q. All right. And you're the defendant in this action; is that correct?

A. Yes.

Q. Petitioner on post-conviction relief?

A. Correct.

Q. And you have caused a petition to be filed with this court?

A. Yes.

Q. You've sat through the hearing this morning and you've heard the areas that the petition alleged or what I've explained to the Court; is that correct?

A. Yes.

. . .

A. Right. That must -- you know, now that I know what happened, that must be why they said there was no defense. But I didn't know about the statement when they told me that.

Q. What's your recollection of when you first heard about the statement?

A. The first I heard about the statement was in court during my penalty phase.

Q. After you had decided that you did not want to have counsel, you had occasion, I believe, on November 28 to come before his Honor, Judge Leavitt, to make a change of plea. Do you recall that day?

A. Wasn't that the same day that --

Q. When you dismissed counsel?

A. Right. That was that day, right.

Q. And changed your plea?

A. Uh-huh.

Q. Do you recall during that timeframe in November whether, in fact, you were

taking any kind of medication in the Clark County Detention Center?

A. I was taking Indoral and Dilantin and phenobarbitol and Vistaril.

Q. And do you recall whether those drugs or medications had any affect upon your ability to know what was going on?

A. I didn't think they did at the time because I was on the drugs. But now when I wasn't on them anymore, I could see that they, you know, had an affect on me.

Q. And what affect did they have?

A. I wouldn't know how to describe it. I guess I really didn't care about anything, you know, it wasn't -- I wasn't very concerned about anything that was going on, you know, as far as the proceedings and everything were going.

Q. And when did you get off of that medication?

A. In the state prison.

Q. All right. And do you recall the reasons that you were taken off the medication?

A. The doctor -- well, not the doctor, the nurse when I went to get my medication, she told me that I wasn't on the medication any more because the doctor felt that my seizures were the result of cocaine use and because I hadn't used it in so long, I didn't need the medication.

Q. And what seizures are you talking about?

A. Well, I had a seizure in the County Jail. I had one prior to that, I don't know exactly how much, you know, maybe a month earlier.

Q. Were you treated by a physician for the first seizure that you talked about?

A. I went to see one.

Q. And who did you go see?

A. Dr. Fox, his name is.

Q. And what, if anything, did he treat you with?

A. He gave me Dilantin.

Q. And this is the same treatment that you had received in the Clark County Jail.

A. Right.

Q. Then you got into the prison system and that physician up there made a different diagnosis?

A. Right.

Q. All right. And that diagnosis was what?

A. He felt I didn't need them because my seizures were caused by cocaine.

Q. Since the time that you've been in the prison system for approximately three and a half, four years, are you on medication at this time?

A. No, I'm not.

Q. Have you had any seizures since that time?

A. No, I haven't.

Q. And you haven't been under any medication that was not prescribed, any contraband medication or anything of that nature?

A. You mean have I been taking drugs up there?

Q. Yes.

A. No, I haven't.

Q. When you informed Judge Leavitt November 28, 1984, that you were under the influence of lots of drugs at the time that these crimes were committed, do you recall stating that to him?

A. I don't recall stating it, but I recall reading it in the --

Q. The transcript?

A. The transcripts of your opening

. . .

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * * * * *

RICHARD ALLEN MORAN, Petitioner, vs. THE STATE OF NEVADA, Respondent.	)	Case No. C 67482 Case No. C 67843 Dept. No. XII Docket "R"

FILED: Sep. 23, 1987

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS

COMES NOW, the Petitioner, RICHARD ALLEN MORAN, by and through his attorney, CAL J. POTTER, III, ESQ. and submits the following Affidavit and supporting medical records in Opposition to the Respondent's Motion to Dismiss.

DATED this 23rd day of September, 1987.

LOVELL, BILBRAY & POTTER

By: /s/ Cal J. Potter
CAL J. POTTER, III, ESQ.
Attorneys for Petitioner
428 South Fourth Street
Las Vegas, Nevada 89101

AFFIDAVIT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

CAL J. POTTER, III, being first duly sworn, deposes and says:

That your Affiant has reviewed the medical records of the Petitioner, RICHARD ALLEN MORAN, from his August, 1984, hospitalization at Southern Nevada Memorial Hospital, as well as his medical records at the Clark County Detention Center on November 28, 1984, the date of the entry of plea;

That at the time this Court took the plea of RICHARD MORAN, the Petitioner was under the influence of drugs;

That the nursing notes from the detention center, attached hereto as Exhibit "A", reflect that on November 28, 1984, MORAN was under the influence of dilatin [sic]; 100 mg. x 3, an anti-epileptic medication that causes confusion; (See, PDR, attached hereto

as Exhibit "B", and incorporated herein by reference); inderal; beta-blocker anti-arrhythmic that causes light headedness, mental depression, hallucinations, disorientation, and short-term memory loss; (See, Exhibit "B", Id.); vistaril, a CNS depressant that causes drowsiness, tremors, and convulsions;

That at the time of the Petitioner's statements to the Metro Officer on August 13, 1984, and the time of his video-taped confession, MORAN was under the influence of narcotics;

That the medical records from the Petitioner's hospitalization on August 6, 1984, indicate that RICHARD MORAN was admitted from surgery to recovery at 2230 hours, August 11, 1984, awake and responsive, but still drowsy from anethesia [sic]. At 2400 hours, he opened his eyes to his name and commuicated [sic] by writing (noted by RN Martin);

That during surgery, Petitioner was given Pentothal and Fentanyl, during the time period of approximately 1830-2030 hours. In post-anethesia [sic] recovery period, he was medicated with demoral [sic]. That Petitioner post-operatively was medicated with morphine sulfate on August 11, 1984; August 12, 1984; August 13, 1984; and August 14, 1984. That the video-taped confession was taken on August 14, 1984.

Further Affiant sayeth naught.

/s/ Cal J. Potter
CAL J. POTTER, III

SUBSCRIBED and SWORN to before me this 23rd day of September, 1987.

/s/ Jewelene Farris
NOTARY PUBLIC